

## **REMARKS**

### **Specification**

In the specification, the Abstract and paragraph [0010] have been amended to correct minor editorial problems.

### **Summary**

Claims 1, 3-10, 13, 14, and 16-21 stand in this application. Claims 2, 11, 12 and 15 have been canceled. Claims 1, 10, 13 and 16 are currently amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested

### **Allowable Claims**

We would like to thank the Examiner for indicating the allowability of claims 4-8 and 18-20 if amended to include all of the limitations of the base claims and any intervening claims. Applicant respectfully submits, however, that these claims represent patentable subject matter as currently listed based on the amendments and/or remarks given for the independent claims as discussed in detail below. Applicant would like to respectfully reserve the right, however, to amend the allowable claims into independent form during further prosecution if warranted.

### **35 U.S.C. § 112**

Claims 1-9 and 12-21 have been rejected under 35 U.S.C. § 112 for not particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. Applicant respectfully traverses the rejection based on the above amendments. These claims have been amended in accordance with the Office Action, and removal of this rejection is respectfully requested. Applicant further submits that the above amendments are made to overcome a § 112 rejection and are not made to overcome the cited references. Accordingly, these amendments should not be construed in a limiting manner.

Claims 2, 12 and 15 have been canceled and have been incorporated into claims 1, 10 and 13, respectively. Applicant respectfully submits that the current language of claims 1, 10, 13 and 16 is clear and particularly points out and distinctly claims the subject matter which Applicant regards as his invention. The Office Action incorrectly quotes the language as “said processor value.” The proper claim language refers to “said processor task value” which refers to the number of other task types affected by assigning a new task to a given processor. The claim term is also clearly explained in Applicant’s specification at paragraph [0027]. Accordingly, removal of this rejection is respectfully requested.

**35 U.S.C. § 102**

At page 4, paragraph 7 of the Office Action claims 1-3, 9, 16-17 and 21 stand rejected under 35 U.S.C. § 102 as being anticipated by Shaffer, United States Patent No. 7,203,943 (hereinafter “Shaffer”). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims 1, 10, 13 and 16 in order to facilitate prosecution on the merits. Applicant submits that the amendments merely clarify, either expressly or impliedly, what was already present in the claims. Furthermore, Applicant submits that the amendments are not narrowing amendments and are not being made for reasons substantially related to patentability.

Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102, the cited reference must teach every element of the claim. *See* MPEP § 2131, for example. Applicant submits that Shaffer fails to teach each and every element recited in claims 1-3, 9, 16-17 and 21 and thus they define over the Shaffer. For example, with respect to claim 1, Shaffer fails to teach, among other things, the following language:

retrieving a processor task value of said task type for each processor, said processor task value representing a number of other task types affected by assigning said task to a processor

According to the Office Action, this language is disclosed by Shafer at Col. 5, lines 21-47. Applicant respectfully disagrees.

Applicant respectfully submits that claim 1 defines over Shaffer. Shaffer at the given cite, in relevant part, states:

In general, the maximum resource load that can be assigned to a computer platform 148 is determined by some measure of the performance of a resource or resources 150 associated with that computer platform 148. For example, a processor resource's 150 performance may be measured by processing power expressed, for example, in terms of millions of instructions per second (MIPS). As a further example, a memory resource 150 may have its performance measured by capacity and speed parameters. As still a further example, an input/output port resource 150 may have its performance measured in terms of bandwidth and, for example, expressed in terms of megabits per second.

As indicated above, Shaffer arguably discloses a maximum resource load that is determined by measuring the performance of a computer platform. By way of contrast, the claimed subject matter uses a processor task value to determine which processor should be chosen for a new task. The processor task value disclosed within the claimed subject matter is not merely a measure of performance, but instead a measurement of how many task types will be affected by the addition of a new task to a given processor. This is clearly different than the maximum resource load disclosed in Shaffer. Consequently, Shaffer fails to disclose all the elements or features of the claimed subject matter. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claim 1. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 3 and 9, which depend from claim 1 and, therefore, contain additional features that further distinguish these claims from Shaffer.

Claim 16 contains features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claim 16 is not anticipated is are patentable over Shaffer for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claim 16. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 17 and 21 that depends from claim 16, and therefore contains additional features that further distinguish these claims from Shaffer.

At page 6, paragraph 13 of the Office Action claims 10-12 and 13-15 stand rejected under 35 U.S.C. § 102 as being anticipated by Hsu, United States Patent No.

6,104,721 (hereinafter "Hsu"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims 1, 10, 13 and 16 in order to facilitate prosecution on the merits. Applicant submits that the amendments merely clarify, either expressly or impliedly, what was already present in the claims. Furthermore, Applicant submits that the amendments are not narrowing amendments and are not being made for reasons substantially related to patentability.

Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102, the cited reference must teach every element of the claim. *See* MPEP § 2131, for example. Applicant submits that Hsu fails to teach each and every element recited in claims 10, 13 and 14 and thus they define over the Hsu. For example, with respect to claim 10, Hsu fails to teach, among other things, the following language:

wherein said task scheduler receives a request to execute a task by one of said array of processors, and assigns said task to a processor based on a processor task value, said processor task value representing a number of other task types affected by assigning said task to said processor

According to the Office Action, this language is disclosed by Hsu at Col. 17, lines 24-35.

Applicant respectfully disagrees.

Applicant respectfully submits that claim 10 defines over Hsu. Hsu at the given cite, in relevant part, states:

10. A communications circuit as recited in claim 8 wherein said local resource control table includes:  
a service type field for storing data representing types of services indicated by those of said call setup requests assigned to said corresponding processor;

a service definition field for storing data representing all service types currently supported by said sets of operational code stored in said local memory units;  
a module functions field for storing data representing those of said modules required for processing tasks associated with said call setup requests assigned to said corresponding processor; and  
a resource usage status field for storing data indicating the amount of processing power currently available in said corresponding processor.

As indicated above, Hsu arguably discloses a local resource control table that contains information related to which processors are used each particular task. Further, the local resource control table arguable contains information regarding the current processing power available to a processor. By way of contrast, the claimed subject matter uses a processor task value to determine which processor should be chosen for a new task. The processor task value disclosed within the claimed subject matter is a measurement of how many task types will be affected by the addition of a new task to a given processor. This is clearly different than the information contained within the local resource control table disclosed in Hsu. Consequently, Hsu fails to disclose all the elements or features of the claimed subject matter. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claim 10.

Claim 13 contains features similar to those recited in claim 10. Therefore, Applicant respectfully submits that claim 13 is not anticipated and is patentable over Hsu for reasons analogous to those presented with respect to claim 10. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claim 13. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claim 14 that depends from claim 13, and therefore contains additional features that further distinguish these claims from Hsu.

**Conclusion**

For at least the above reasons, Applicant submits that claims 1, 3-10, 13, 14, and 16-21 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1, 3-10, 13, 14, and 16-21 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-9338 to discuss any matter concerning this application.

Appl. No. 10/669,309  
Response Dated August 29, 2007  
Reply to Office Action of May 29, 2007

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Examiner: To, Jennifer N.  
TC/A.U. 2195

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to the credit card in the previously filed credit card authorization form.

Respectfully submitted,

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/John F. Kacvinsky/

John F. Kacvinsky, Reg. No. 40,040  
Under 37 CFR 1.34(a)

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